



January 11, 2002

Ms. Kimberly Mickelson
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR2002-0200

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157330.

The City of Seabrook (the "city"), which you represent, received a request for (1) a letter relating to "Seabrook Island Sec 3 Plat Submittal"; (2) legal bills submitted by Olson & Olson and Fisher & Newsom for September, 2001; and (3) tapes from two city council meetings. You state that the tapes of the city council meetings have been released. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107 and 552.111 of the Government Code and Texas Rule of Evidence 503.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(e)(1)(D), "[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

The submitted request for information reflects that the city received this request on October 18, 2001. The city then had fifteen business days, or until and including November 8, 2001, in which to comply with section 552.301(e)(1)(D). As of the date of this decision, the city had not submitted to this office either the requested information, or representative samples

of the information, that the city claims is excepted from disclosure. Thus, the city failed to comply with section 552.301 in requesting this decision. Therefore, the information in question is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.103, 552.107, and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived; these exceptions do not make information confidential or protect third-party interests.¹ The city waived these exceptions in failing to comply with section 552.301. *See generally* Open Records Decision No. 630 at 2-3 (1994). The city also raises section 552.101 of the Government Code.² However, the city has not submitted the requested information or representative samples, and thus we have no basis for finding that the information in question is confidential by law. Therefore, we have no choice but to order the information released per section 552.302. If you believe that this information is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹*See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discussion of waiver of discretionary exceptions), 630 at 4 (1994) (section 552.107(1) may be waived), 542 at 4 (1990) (section 552.103 may be waived), 470 at 7 (1987) (section 552.111 may be waived).

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See also In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (holding that Texas Rules of Evidence are other law that makes information confidential for purposes of Gov't Code § 552.022).

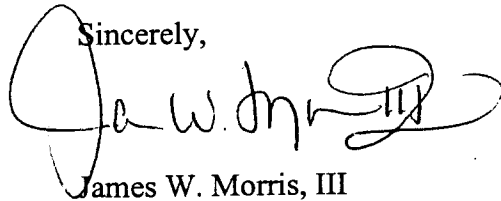
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 157330

c: Mr. Ted McCollom
4600 S. Flamingo
Seabrook, Texas 77586